THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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W.P.NOS.1409 OF 1991, 22007 OF 1996, 34794 OF 1998 AND C.C.NO.554 OF 1996

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DATED; 31-08-2005

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W.P.NO.1409 OF 1991

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Between:

Laxmamma and another .. Petitioners

And

The district Collector, Hyd and others .. Respondents

W.P.NO. 22007 OF 1996

BETWEEN:

M.Jaya Krishna .. Petitioner

And

Joint Collector,Hyderabad District .. Respondent

W.P.NO. 34794 OF 1998

BETWEEN:

POONAMCHAND .. PETITIONER

AND

JOINT COLLECTOR AND OTHERS .. RESPONDENTS

C.C.NO.554 OF 1996

BETWEEN:

M.JAYA KRISHNA .. PETITIONER

AND

R.SUBRAMANIAM AND OTHERS .. RESPONDENTS

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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W.P.NOS.1409 OF 1991, 22007 OF 1996, 34794 OF 1998 AND C.C.NO.554 OF 1996

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COMMON ORDER

Heard the counsel appearing for the parties.

2. Since the subject land in all the three writ petitions is one and the same and as the contempt case is filed complaining the disobedience of the interim orders passed in one of the writ petitions i.e., in W.P.No.1409/1991, they are heard together and with the consent of respective counsels, they are being disposed of by this common order.

3 . W.P.No.1409/1991 has been filed for a writ of prohibition, prohibiting the respondents, who are District Collector, Commissioner Municipal Corporation and Deputy Commissioner, Municipal Corporation, Hyderabad Circle No.2, Hyderabad and their subordinates from entering in the lands which are situated at Musi river bed and adjoining the northern retaining wall of Musi River bearing S.No. 17 (T.S.No.9) entire land, S.NO.18 (T.S.No.8) entire land and 1/3rd share in Acs.2.00 of S.No.19(T.S.No.7), situated within Totagudda Revenue Village within Musheerabad Revenue Mandal Hyderabad; and further to declare the action of the respondents dated 20.1.1991 as illegal and arbitrary.

4. The case of the petitioners in the affidavit filed in support of the writ petition is that one late Mali Muthamma wife of late Laxmaiah was the recorded owner of the subject land and that she is mother-in-law to 1st petitioner and grandmother to 2nd petitioner. They being legal heirs, inhered to the said property on the death of Mali Muthamma in the year 1964. The 2nd respondent – Commissioner Municipal Corporation of Hyderabad issued notification for acquisition of 382.66 sq. yards of land in Sy.No.17 for construction of Salarjung Bridge and the petitioners filed their claim petition. The Land Acquisition Officer while passing award in acquisition case no.B1/214/82 on 28.3.1985 admitting the patta rights of Mali Muthamma, referred the award proceedings to Civil court, as the petitioners did not obtain the succession certificate. The I Additional Judge, City Civil Court, Hyderabad in O.P.No.35/1986 granted succession certificate and held that the petitioners are the legal heirs of late Mali Muthamma. Therefore, the case of the petitioners is that in view of the above proceedings, they are the owner of the subject land, the subject land is situate at

Musi river bed and due to construction of Osman Sagar Reservor and Himayath Sagar Reservor, there is no possibility of heavy flood flowing in Musi river, hence they have raised the level of the land by filling it with sand and constructed some sheds and leased them to different tenants and the Municipal Corporation has allotted even door numbers to the said sheds. One of the tenant Mr.Raj Kumar was running arrack business and when the 1st and 2nd respondents raised objection for grant of licence, he filed writ petition and the same was allowed and in the writ appeal, this court while dismissing the writ appeal, observed that MCH is not precluded from taking any action in accordance with law. Now the grievance of the petitioners is that the 1st and 2nd respondents have illegally demolished the structures in the subject land of the petitioners without giving any notice and, therefore, the same amounts to violation of legal and fundamental rights. Hence, the writ petition.

5 . This court by order dated 25.3.1991 in WPMP.NO.1698/1991 in W.P.No.1409/1991 passed interim orders restraining the respondents and their subordinates from entering upon the lands of the petitioners. Complaining that the respondents have violated the said interim order, the petitioners filed the contempt case in C.C.No.554/1996. The respondents also filed counter affidavits denying the allegation with regard to flouting of the orders of this court and stated that the interim order of this court dated 25.3.1991 pertains the land in Sy.No.17, 18 and 19 only and there is no mention about the Government land in T.S.No.23 in the said order. It is further stated that the demolition squad has removed the structures existing in T.S.No.23, which is a Government land and have not touched the structures existing in T.S.Nos.7, 8 and 9 and, therefore, they have not violated the orders of the Hon'ble High Court. However, the contempt case will be dealt with later, in the course of the judgment.

6. In the counter affidavit filed by the 1st respondent to W.P.NO.1409/1991, the writ averments were denied. It is stated that the subject land is the Government land and the petitioners are mere encroachers. The land claimed by petitioners i.e. T.S.Nos.7,8 and 9 Block –C ward-202 admeasuring 6 Acres 17 guntas have been declared as Escheat land under Section 7 of Andhra Pradesh Escheats and Bona Vacantia Act, 1974 (for short 'Act 35 of 1974) as per proceedings of the Joint Collector, Hyderabad dated 20.1.1995 in proceedings no.B4/3421/91,as one Mali Muthamma, died intestate and without leaving legal heirs and other rightful owners

of the above property. The averment that Mali Muthamma was the mother-in-law and grandmother of the petitioners 1 and 2 is denied, for want of knowledge. It is stated that the respondents are not aware of proceedings in O.P.No.35/1986, as they are not the parties. It is stated that under the guise of T.S.Nos. 7, 8 and 9 (old Sy.Nos.17, 18, 19), the petitioners encroached upon the Government land in T.S.No.23/2, Block-C, ward-202 of Thotaguda village and, therefore, the demolition was effected only in T.S.No.23. It is further stated that the petitioners have to file a suit for declaration of title and they cannot file the writ petition. With these averments, the respondents sought for dismissal of the writ petition.

7. One Sri P.Rajaram, who is the working as Law Officer, Hyderabad Collectorate, filed additional counter affidavit on behalf of the respondents stating the history of the subject lands in Sy.nos.17,18 and 19 of Thotaguda revenue mandal. It is stated that as per the initial survey of Thotaguda village, conducted in the year 1947, the land in Sy.No.17 was classified as inam land and the land in Sy.Nos.18 and 19 was classified as sarkari land. As per the Sethwar and phani for the year 1951 and Khasra Pahani of 1954-55, the land in Sy.No. 17 was classified as inam land and land in Sy.Nos.18 and 19 was classified as Sarkari. The Town survey of Thotaguda village was conducted during the year 1966-76 under the provisions of A. P. Sruvey and Boundaries Act, 1923 and the final check operation was conducted by the Special Deputy Collector by issuing notices and inviting objections and thereafter, the town survey was implemented in the TSLR and after publication of the details of the said survey numbers, gazette no.35 dated 29.5.1976 was published and in the said publication, the land was shown as Sarkari land and Mali Muthamma, w/o Laxmanaiah was shown as Kabzdhar (encroacher). As no objections were filed, the entries recorded in TSLR have become final. The town survey conducted under the provisions of the A. P. Survey and Boundaries Act, 1923 is binding on all the parties and mutation cannot confer any right or title in respect of the Government land. As per Faisal patti for the year 1960, 64-65, 1981, 1989-90, sivai Jamabandi was levied against the encroachers in respect of Sy.Nos.17, 18 and 19 of Thotaguda village and therefore this amounts to permissive possession. Finally it is stated that the land in Sy.Nos.17, 18, 19 is recorded as Government lands; that the land forms part of musi river and; that T.S.No.7, 8, 9 Block C ward no.202 of Thotaguda village shows that the above lands are recorded as Government lands. With these averments, the writ petition is sought to be dismissed.

8. The petitioners also filed reply affidavit and denied the averments made in the additional counter affidavit.

9. From the above writ petition and the counter affidavit, it is clear that the case of the petitioners is that as they are the legal heirs of Mali Muthamma, as per the decree in O.S.No.35/1986, they are the owners of the subject land. On the other hand, the case of the respondents is that as per the revenue records, the Government is the owner of the land and as the petitioners have encroached the Government land, they effected demolition in T.S.No.23. The further case of the respondents is that the land is situated in musi river. The respondents also pleaded ignorance of the proceedings in O.S.No.35/1986, as they are not the parties to the suit. Their further case is that after conducting of survey during the years 1966-76 under the provisions of A. P. Survey and Boundaries Act, 1923, the A.P. Gazette No.35 dated 29.5.1976 was published and the entries made in TSLR have become final, as no objections were filed and no decree of civil court was obtained for change of entries. As the encroachers were permitted to be in possession of the Government land by levying tax, it amounts to permissive possession. Their further case is that the petitioners have to file a suit for declaration of title and writ petition is not maintainable. The respondents have specifically denied that they demolished the structures in the subject land and it is stated that the demolitions were effected only in T.S.No.23, to which the petitioners are not concerned.

10. The case of the respondents in the above writ petition is that as per the proceedings No.B4/3421/1991 dated 20.1.1995 issued by the Joint Collector, Hyderabad, the land claimed by the petitioners in T.S.Nos.7, 8 and 9, Block-C, Ward-202 admeasuring Acs.6-17 guntas, was declared as escheat land under Section 7 of Act 35 of 1974. Challenging these proceedings, the 2nd petitioner in the above writ petition i.e., W.P.No.1409/1991, filed another writ petition in W.P.No.22007/1996.

11. The case of the petitioner in this writ petition i.e., W.P.No.22007/1996 is that the land in T.S.Nos.,7, 8 and 9 belongs to his grandmother Mali Muthamma and after her death in the year 1964 and after the death of his father in the year 1976 their family has been in possession and enjoyment of the said property. When the portion of the land in Sy.No.17 was acquired by Municipality for construction of Salarjing project,

he was awarded Rs.3,110/- towards the land admeasuring 382.66 sq. yards in O.P.No.35/1986 on the file of I Additional Judge, City Civil Court, Hyderbad. He stated that in the year 1991 notice under Section 7 of Act 35 of 1974 was issued to him and he filed his objections. Thereafter, without giving him any further communication, the impugned proceedings dated 20.1.1995, declaring the land as escheat property was served on him. He stated that under Section 8 of Act 35/1974 when the person in possession of the property resists the surrender, the Government has to file a suit and the authority under the Act cannot himself adjudicate the matter and pass order treating the property as escheat property. As he resisted the surrender, the Authority cannot declare the land as escheat property. With these averments, he sought for setting aside the order dated 20.1.1995.

12. The 1st respondent – Joint Collector, filed counter affidavit and denied the writ averments. It is stated that the name of Mali Muthamma was recorded as Kabjedar of Sy.No.17 to 19, corresponding to T.S.No.7/1, 7/2, 8, 9, 9, 9/1, 9/2 Block-C, ward no.202 of Thotaguda village and Mali Muthamma died issueless in the year 1964 and no one claimed the succession up to 1988. During the town survey conducted in the year 1974, the final survey was notified and no one filed objections. During the year 1991, when the enquiry was taken up under Act 35 of 1974, one Poonam Chand along with this writ petitioner, responded to the notices, but did not produce any documentary evidence in support of their claim. It is further stated that no one is in possession of the subject land. Considering the material on record, the proceedings dated 20.1.1995 were passed declaring the land as escheat land under Section 7 of the said Act. It is further stated that there are disputes between Poonam Chand and the writ petitioner M.Jayakrishna. It is stated that they are not aware of the proceedings in O.S.No.35/1986, as they are not parties to the suit. Finally it is stated that as per the town survey, which was impleamented in TSLR, which was published by gazette notification dated 29.5.1976, the subject land is shown as Government land and the Mali Muthamma as Kabzadar (encroacher). With these averments, the writ petition is sought to be dismissed.

13. From the counter the specific case of the respondents is that the land is the Government land and Mali Muthamma, was an encroachers. However, the land was declared as escheat property as Mali Muthamma, died intestate. The case of the respondents is that notices were issued to the petitioner and one Poonam Chand before declaring the land as escheat property as per proceedings dated 20.1.1995.

But the case of the petitioner is that he was not issued with any subsequent communication after issuance of notice and he was served only with impugned proceedings. On the other hand the case of the Government is that the petitioner and Poonam Chand were issued with notices, but they failed to produce any documentary evidence in support of their claim and, therefore the impugned proceedings were issued declaring the property as escheat property. As no one resisted the surrender, the question of filing civil suit does arise. It is stated that there is dispute between the petitioner and Poonam chand with regard to the subject property and that the Government is not aware of the proceedings in O.S.No.35/1986 as the Government is not made a party.

14. Mr.Poonamchand who was also issued with notice before declaring the subject land as escheat property under the provisions of Act 35 of 1974, filed another writ petition in W.P.No.34794/1998 challenging the proceedings of the Joint Collector in case No.B2/3421/91 dated 20.1.1995 declaring the subject land as escheat property and aggrieved by the finding of the Joint Collector that Mali Muthamma died issue less and that he has not file any documentary evidence or revenue records of possession or ownership or even his predecessor-in-interest.

15. The case of the petitioner – Poonam Chand in this writ petition is that his father and uncle purchased land admeasuring 24 guntas in Sy.Nos.17 and 30 guntas in Sy.No.19 of Thotaguda village, Musheerabad under a sale deed dated 11.2.1955 from the original owner Mali Muttamma and got it certified under Section 42 of the Stamp Act. He being the legal heir, inhered the property. When the District Collector cancelled the mutation in revenue records, which was effected, he filed W.P.No.5603/1991 and the said writ petition was disposed of observing that the order of the District Collector canceling the mutation proceedings shall not be looked into when civil court decides the question of title. His further case is that though he received notices in case No.B2/3421/1991, he did not initially participate in the enquiry in view of the orders in W.P.No.5603/1991 and subsequently, when his counsel filed vakalt on his behalf, the same was not received by the Joint Collector before passing the impugned order. He filed O.S.No.1796/1987 on the file of IV Additional Judge, City Civil Court, Hyderabad for permanent injunction and the suit was decreed on 23.10.1997 giving a categorical finding that his father and uncle have purchased the property from Mali Muttamma. Pursuant to the impugned proceedings dated 20.1.1995, when the respondents tried to interfere with his

possession, he filed W.P.No.12404/1996 and the same was allowed. Writ appeal filed challenging the said order in W.A.No.571/1998 by the respondents was allowed and the order of the learned single Judge was set aside and it was left open to challenging the proceedings dated 20.1.1995 and therefore, he filed the present writ petition. The further case of the petitioner is that his uncle and father purchased the property from Mali Muthamma,. Therefore, though she died intestate and without leaving legal heirs, by virtue of the sale, they have become the owners. It is also stated that the petitioner is in possession of the part of the subject property doing automobile business and he also obtained a decree of civil court in his favour. Therefore, the case of the petitioner is that the finding of the Joint Collector that as Mali Mutha has died intestate and without leaving legal heirs and therefore the property in question should be treated as escheat property as defined in Section 2(iv) of Act 35 of 1974 is not tenable and also the finding of the Joint Collector that the property is held to be not in possession of any one, is also untenable. With these averments, the petitioner – Poonam Chand sought for setting the impugned proceedings of the joint Collector dated 20.1.1995.

16. The 1st respondent – Joint Collector filed counter affidavit and denied the writ averments. It is stated that though the petitioner is having knowledge of the impugned proceedings dated 20.1.1995, he filed the writ petition with delay and the same has not be properly explained. As per the revenue records, Smt.Malimuthamma was shown as encroacher of the subject land and, therefore, parting of the said land by her in favour of the petitioner does not confer any title, as the land is Government land. The land in Sy.No.17 and 19 were treated as Government land in TSLR record during 1974 as per the revision of A.P.Survey and Boundaries Act and as per the provisions of the said Act, final notification was issued. The claim of the petitioner over the premises bearing no.15-5-581/2 and 3 does not fall in old sy.no.17 to 19 of Thotaguda village, but falls in T.S.No.23/2 and the said land as per TSLR is Government land. The petitioner though received notices, did not file any objection before the Joint Collector. The petitioner filed the earlier writ petition suppressing the present impugned proceedings dated 20.1.1995 and, therefore, in the writ appeal W.A.No.571/1998, the Division Bench set aside the order of the learned single Judge in W.P.No.12040/1996 on the ground that the petitioner has suppressed the material fact about the impugned order. It is stated that the since the Government is not a party to O.S.No.1796/1987 filed by the petitioner,

the same is not binding on the respondents. It is stated that the petitioner had participated in the entire proceedings and he did not produce any injunction order from civil court in support of his claim. The averment that vakalatnama filed on behalf of the petitioner was not accepted is also denied. It is stated that the A. P. Record of Rights Act does not apply to Government land, as it is already declared by competent authority as escheat property. Finally it is stated that the petitioner is an encroacher and with an intention to grab the Government property, has filed the writ petition.

17. The contention of the learned counsel for the petitioners in W.P.Nos.1409/1991 and 22007/1996 is that the respondents have demolished the structures in subject land without issuing any notices and that amounts to violation of fundamental rights. He stated that as per the revenue records, Mali Muthamma is recorded as pattadar of the subject land and since the petitioners being the legal heirs of Mali Muthamma also obtained the succession certificate in O.S.No.35/86, they are the owners of the land and the Government is not the owner of the land. However, he fairly conceded that title dispute cannot be decided under writ proceedings.

18. The learned counsel appearing for the petitioner in W.P.No.34794/1998 submitted that the petitioner is the owner of the subject and that he also filed suit in O.S.No.1796/1987 and obtained decree for permanent injunction and the appeal preferred was also dismissed and that the second appeal is pending without any interim orders being passed. He contended that the Joint Collector considering the inadmissible evidence and rejecting the admissible evidence, declared the property as escheat property and therefore, the impugned proceedings dated 20.1.1995 is not legal and is liable to be set aside. In support of this contention, he relied on the Division Bench judgment of this Court in ***STATE OF ANDHRA PRADESH v. PRAMILA MODI AND OTHERS***.

19. On the other hand case the case of the respondents is that they have not demolished any structures existing in the subject land and they demolished the encroachments in T.S.No.23, to which the petitioners are not concerned. The learned Government Pleader for revenue further submitted that as per the revenue records, the land is Governments land and further as no objections were filed pursuant to the publication issued after conducting survey of land and as no suit was

filed for change of entries in TSLR, the entries in revenue records have become final. He further contended that dispute with regard to title cannot be decided in writ petition and the petitioners have to file suit. He stated that the petitioners are not the legal heirs of Mali Muthamma, and therefore, the property, after conducting the enquiry under Act 35 of 1974 was declared as escheat property. With these contentions, he sought for dismissal of the writ petitions.

20. From the narration of above facts, it is to be seen that the case of the petitioners in W.P.Nos.1409/1991 is that they are the legal heirs of Mali Muthamma, who is the recorded owner of the subject property and therefore, the demolition effected by the Government in the subject land i.e., in T.S.Nos. 7, 8 and 9 of Totaguda Revenue Village, Musheerabad Revenue Mandal Hyderabad, without issuing any notice is illegal and amounts to violation of fundamental rights guaranteed by the Constitution of India. On the other hand the case of the respondents in the counter affidavits filed is that the subject property is Government land as per the revenue records and the details, which were referred to above. The further case of the respondents is that they have not entered into the subject land and that they effected demolition only the encroachments made in Government land in T.S.No.23/2, Block-C, Ward-202 of Thiotaguda village and that they have not demolished anything in the subject land which is T.S.Nos.7, 8 and 9. From these rival contentions it appears that the petitioners are claiming ownership over the property on the one hand the respondent – Government is claiming ownership on the other hand. However, the case of the respondents is that the subject property is declared as escheat property under the enquiry conducted under Section 7 of Act 35 of 1974. However, this question whether the property can be declared as escheat property, when the said property is said to be Government property, is a question, which will be dealt with subsequently. But coming to the facts and circumstances of the case in W.P.No.1409/1991, it is appears that there is serious dispute with regard to title of the property. Further the case of the respondents is that they have not even entered into the subject property, claimed by the petitioners and they have given the particulars of the land in which they effected demolition of encroachments. In these circumstances, this court under writ jurisdiction cannot pass any positive directions, since the disputed questions of facts are involved.

21. Coming to the contempt case, the case of the respondents in the counter is that they have not flouted the interim orders granted by this court and they categorically

stated that demolition squad has removed the structures existing in T.S.No.23, which is a Government land and they have not touched the structures existing in T.S.Nos.7, 8 and 9. But the learned counsel for the petitioners submitted that an Advocate Commissioner was appointed by this Court and the said Commissioner conducted the spot inspection and submitted report, according to which, the respondent – authorities have demolished the structures in T.S.Nos.7, 8 and 9 and, therefore, it shows that the authorities have violated the interim order granted by this court. On the other hand, the learned Government Pleader appearing for 1st contemnors submitted that the demolition took place only in T.S.No.23, but not in other survey numbers and, as such, there is no violation of the orders of this court. He submitted that the petitioner was issued with notice dated 17.5.1996 to remove the encroachments made in the land in Musi River bed in T.S.No.23, ward 202, block C within 24 hours and vacate the structures failing which steps as contained in Section 7-A of the Land encroachment Act will be taken to remove the encroachments by force. The said notice was received by the petitioner. He further submitted that the Advocate Commissioner, who is said to have conducted spot inspection, has not issued any notice to the respondents and as such there was no opportunity to the respondents to present themselves on the date of inspection. He stated that the respondents have filed objections to the commissioner's report. He further submitted that on the application of one of the petitioners M.Jaya Krishna, he was issued with memo NO. PESHI/116/96 dated 18.5.1996 informing the above position that they are not interfering with their possession in T.S.Nos.7, 8 and 9 and that as the petitioner has encroached the Government land in t.S.No.23/Part Block 'C' ward no.202 of Totaguda village beyond the boundaries in T.S.Nos.7, 8 and 9, they asked the petitioner to remove the said encroachments forthwith.

22. The relevant portion of the above memo dated 18.5.1996 issued by the Collector and District Magistrate, Hyderabad District is extracted as under for better appreciation:

> "The representation filed by Sri M.Jaya Krishna has been examined. Orders passed by Hon'ble High Court in CPMP No.1698 of 1991 in WP No.1409 of 91 dated 9.3.91, and also other documents enclosed to the representation have been perused.
>
> The petitioner is informed that the orders of Hon'ble High Court are applicable to the lands in Survey No.17(T.S.No.9) Survey No.17 (TS.No.8) and 1/3rd share of

Survey No.19 (T.S.No.7). The Government are not interfering with the possession of the petitioner in the said survey numbers.

It is noticed that the petitioner has encroached upon the Government land in T.S.No.23/part Block 'c' ward no.202 of Totaguda village beyond the boundaries of T.S.No.7, 8 and Government land, in T.S.No.23 part. It is a clear case of encroachment on the Government land.

The petitioner is therefore directed to remove all the structures raised by him on the Government land in T.S.No.23 forthwith."

23. From the above the categorical statement of the contemnors is that they have not touched the structures existing in T.s.Nos.7, 8 and 9, to which the interim orders of this court applies and the demolition of structures was effected in T.S.No.23, which is a Government. From the above extracted memo it also appears that the respondents have issued notice to the petitioner before effecting the demolition in T.S.No.23, which is a Government land.

24. Under the above circumstances I am of the view that the respondents have not violated the orders of this court, as contended by the petitioners, for proceeding under Contempt of Courts Act.

25. With regard to the other two writ petitions i.e., W.P.Nos.22007/1996 and 34794/1998, the petitioners in these two writ petitions are aggrieved by the proceedings of the Joint collector, Hyderabad in Case No.B2/3421/91 dated 20.1.1995.

26. A perusal of these proceedings would show that as there was controversy with regard to the legal heirs of Mali Muthamma, who is the recorded owner of the subject property, the District Collector, Hyderabad in his order No.B2/313/890, dated 31.12.1990 on the appeal preferred by Smt. Laxmamma (1st petitioner in W.P.No.1409/1991) and others held that the property should be treated as Escheat Property vested in Government till the alleged legal heirs prove succession in civil court. Pursuant to this order, the Joint Collector issued notices and conducted an enquiry under Section 7 of Act 35 of 1974 and held that since Mali Muthamma died intestate and without leaving legal heirs and therefore the subject property is treated

as escheat property as defined under Section 2(iv) of the Act 35 of 1974. With regard to the claim of the petitioner Poonam Chand in W.P.No.34794/1998, the Joint Collector held that he has not filed any documentary evidence or revenue record of possession or ownership even of his predecessors-in-interest and that the other respondents failed to file any reply and, therefore, held that the property is not in possession of any person.

27. In the counters filed by the respondents to all the three writ petitions it is categorically stated that the land is the Government and the petitioners are encroachers. The respondents also gave details of the revenue records like TSLR and the notifications and the gazette published by the Government to show that the land is a government land.

28. In the light of the above, to decide the validity of the impugned proceedings dated 20.1.1995 passed by the Joint Collector declaring the property as escheat property, the question that arises for consideration is that whether the Government can declare the subject property as escheat property invoking the provisions of Act 35 of 1974, when as per the case of the Government, the property is the Government property?

29. In order to consider this issue it is necessary to first look into the objects and reasons of the Act No.35 of 1974. The objects and reasons of Act.35 of 1974 reads as under:

> *"An Act to provide for the determination, custody and disposal, of property vested in the State of Andhra Pradesh by escheat or lapse or as Bona vacantia for want of a rightful owner and of unclaimed property and for matters connected therewith."*

30. From the above it shows that that the intention of the legislature was to deal with the property, for which there is no rightful owner and the property, which is unclaimed. Further Section 2(iv) defines 'escheat', means any property the owner of which dies intestate and without leaving legal heir." Section 7 contemplates enquiry for declaring the property as escheat property.

31. If there is any property, the owner of which dies intestate or there is any unclaimed property, after conducting enquiry under Section 7 of the Act, the property

can be declared as escheat property by publishing declaration as contemplated under Section 12 of Act 35 of 1974.

32. But the case of the respondents in the counter affidavits filed is that the property is the Government property and the petitioners are mere encroachers. When the property is the Government property as per the case of the respondents, the invocation of Act 35 of 1974 is not tenable and the on that ground the impugned order dated 20.1.1995 is liable to be set aside.

33. Apart from the above ground, the case of the respondents in the counter is that the property is Government land and Mali Muthamma, was an encroacher. But the impugned proceedings shows that enquiry under Section 7 of the Act 35 of 1974 was conducted as the District Collector, Hyderabad in his order No.B2/313/90 dated 31.12.1990 on appeal; preferred by Smt. Laxamma and others under Section 158 of the A.P. (T.A.) L.R. Act of 1317 fasli, as per the orders of the Commissioner, Survey Settlements and Land Records Ref. No.P5/1534/89 dated 14.12.1989 in respect of S.Nos.17, 18 and 19 admeasuring Acs.1-06 guntas, Acs.3-17guntas and Acs.2-00 respectively corresponding to T.S.Nios.202-c-7, 202-c-7/1, 202-c-7/2, 202-C-8, 202-C-9/1 and 202-C-9/2 of Thotaguda village, Musheerabad Mandal, Hyderabad District; held that as Mali Muthamma was dead and there was a controversy with regard to the legal heirs, the property should be treated as eschet property vested in Government till the alleged legal heirs prove succession in civil court. Therefore as per counter the case of the respondents is that the land is Government land and in the impugned proceedings, it was otherwise.

34. Further under Section 8 of Act 35 of 1974 if there is any resistance from the person in possession of property, which is sought to be declared escheat property, the Local Officer has to institute a suit. In the impugned proceedings dated 20.1.1995 the Joint Collector held that since Mali Muthamma has died intestate without leaving legal heirs to property to subject property, as per the definition under Section 2(iv), he treated the property as escheat property. Further he also recorded that property is held to be not in possession of any one. Therefore, as per the impugned proceedings, the property is not in possession of any one. But in the memo no.peshi/116/96 dated 13.5.1996 issued by the Collector, Hyderabad District to the petitioner M.Jaya Krishna in W.P.No.1409/1991, (which is already extracted above, while dealing with contempt case), it is stated that the Government are not interfering with the possession of the petitioner in the survey no. 17 (T.S.No.9)

survey no.18 (TS.No.8) and 1/3rd share of Survey No.19 (T.S.No.7). From this the Government appears to have admitted the possession of the petitioner. But in the impugned proceedings dated 20.1.1995, the Joint Collector recorded that the land is held to be not in possession of any one. These two appears to be contrary to each other.

35. But however, this court is not going to give a finding on the above two aspect, since these are all disputed questions of fact. Only on the ground referred to above that the Government cannot declare its own land as escheat property, the impugned proceedings are held to be illegal.

36. The case of the petitioner in W.P.No.34794/1998 i.e., Poonam Chand is that his father and uncle purchased the property under sale deed and that he proved his possession by filing a suit in O.S.No.1796/1987 dated 23.10.1997. Whereas the case of the petitioner in the other two writ petition is that since they being the legal heirs of Mali Muthamma as per the decree in O.S.No.35/1986 and as they were paid compensation when the land in Sy.No.17 was acquired for the purpose of construction of Salarjung bridge and as the Mali Muthamma was recognized as owner of the subject property, they are entitled to property. Jayakrishna, who is the petitioner in W.P.No.2207/1996, who challenged the proceedings of the Joint Collector dated 20.1.1995 did not refer to any sale transaction entered into between Mali Muthamma and the alleged predecessors-in-title of the petitioner in W.P.No.34794/1998 ie., Poonamchand. On the other hand, the case of the respondents as per the counters filed is that the land in question belongs to Government and Mali Mutha was an encroacher and, therefore, when Mali Muthamma herself was an encroachers, she cannot part with the land and even if she has parted, that will not confirm any title.

37. Further as submitted by the learned counsels for the parties, it is to be seen that though the civil disputes are pending between the petitioner in W.P.No.22007/1996 and the petitioner in W.P.No.34794/1998. So far no competent court declared title and the suits are pending only with regard to injunction, to which the official respondents are not parties. Moreover no suit for declaration of tile is pending. Thought the petitioner in W.P.No.22007/1996 Jayakrishna filed suit for cancellation of sale deed in O.S.No.3312/2002, the same is pending and is at the stage of framing issues. The suit filed by Poonam Chand, (petitioner in W.P.No.34794/1998)

in O.S.No.1796/1997 on the file of IV Additional Judge, City Civil Court, Hyderabad for perpetual injunction was decreed on 23.10.1997. Aggrieved by the same A.S.No.14/1998 was filed by the defendant and the same was dismissed on 24.9.2001. Again challenging the same, S.A.No.11/2002 was filed by the defendants in the suit, on the file of this court and there are no interim orders. The said appeal is still pending. Therefore, all these facts would clearly show that no suit for declaration of title is filed by either party.

38. However, the above facts and circumstances would also show that each of the party including the Government is claiming title over the land in question by placing reliance on the material in support of their case. Therefore, all these questions cannot be decided under the writ jurisdiction and it is for the respective parties to prove their title by filing suits in appropriate courts and as per the settled law that entries in revenue records or mutation in the revenue records will not confer any title and title has to be proved independently. The learned counsel for the petitioners in W.P.No.1409/1991 also fairly admitted that title dispute cannot be gone into under writ jurisdiction.

39. In view of the foregoing discussion, the impugned proceedings dated 20.1.1995 is set aside on the ground that invocation of the provisions of Act 35 of 1974 is not permissible, when the claim of the Government is that the land in dispute is their land. However, it is left open to the parties to prove their title in appropriate civil court.

40. In view of the above reasoning, the other contentions of the counsel for the petitioners is not tenable and also the Division Bench judgment in Pramila Modi's case (1 supra), though unexceptionable, is not applicable to the facts of the case.

41. Accordingly W.P.No.1409/1991 and C.C.No.554/1996 are dismissed and W.P.Nos. 2207/1996 and 34794/1998 are disposed of with the above directions. No costs.

Avs ----------

31.08.2005